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Supreme Court, U.S.
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IN THE
Supreme Court of the United States

PAUL AMELIO,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In this case, the New Jersey Supreme Court reversed the decision of two lower State Courts which had invalidated the defendant's conviction for drunk driving on the ground that the police did not have a constitutional basis to conduct an investigatory stop of the defendant's motor vehicle. The New Jersey Supreme Court held that the stop was constitutionally valid, notwithstanding the fact that it was predicated entirely on a telephone tip to the police from the defendant's 17 year old daughter, who merely reported that her father was "drunk," without providing any factual basis to enable the police to verify the reliability of the tip.

The Questions presented are:

1. Can a telephone tip from a citizen-informer that a defendant is "drunk," which is unsupported by any personal observations made by either the informer or the investigating police officers, and in the absence of any other facts verifying the reliability of the tip, give rise to a reasonable and articulable suspicion that a motor vehicle offense is being committed in order to justify the stop of defendant's vehicle?
2. Can the veracity of a citizen-informant be presumed without any corroboration as to either the informant's identity or the tip itself?

LIST OF PARTIES

The parties below are listed in the caption. In addition, the Attorney General of New Jersey appeared as *amicus curiae* in support of the respondent, State of New Jersey.

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OPINION BELOW

The opinion of the New Jersey Supreme Court has been designated for publication, but has not yet been published.

STATEMENT OF JURISDICTION

The Opinion of the New Jersey Supreme Court was entered on December 22, 2008. (App. A at 1a.) This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a), which provides that the United States Supreme Court may review a final judgment rendered by the highest court of a State where there is a claim of title, right, privilege or immunity arising under the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution, which guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

STATEMENT OF THE CASE

The facts of this case were stipulated by agreement of the Clifton Municipal Prosecutor and defense counsel, and set forth on the record in the Clifton Municipal Court on May 23, 2006. (App. D at 23a.) Specifically, the stipulated facts consist of an excerpted police report prepared by one of the arresting officers in the case. To summarize, on December 11, 2005, at approximately

12:30 a.m., officers of the Clifton Police Department were dispatched to the defendant's residence at 130 Patricia Avenue in Clifton, on a report of a domestic disturbance. The complainant, identified in the report only as "M.A., age 17," contacted police dispatch to report that she was having a verbal dispute with her father, the defendant. While in the process of responding to the incident, M.A. allegedly advised dispatch that her father was "drunk," and that he was leaving the scene operating a black Oldsmobile bearing license tag JR463K, heading toward Passaic Avenue. There is no indication in the excerpted police report that M.A.'s opinion about her father's intoxication was obtained from her own personal knowledge or observation. Nor is there any indication that the police attempted to verify the identity of the caller, her relationship to the defendant, or the reliability of the information she was conveying.

As set forth in the police report, upon arrival at the intersection of Passaic Avenue and Allwood Road, the responding officer observed a black Oldsmobile Intrigue with the same license plate provided by dispatch turning left onto Patricia Place. The report indicates that the officer immediately brought his vehicle behind the driver of the Oldsmobile as the driver parked his vehicle at the side of the road. At that point, the driver is said to have paused for a few seconds, and then to have driven away. The report indicates that the officer then re-entered the patrol vehicle and activated the emergency lights and siren on the vehicle in an attempt to pull the Oldsmobile over. The driver is stated to have continued east on Patricia Place until he pulled partially into his driveway at 130 Patricia Place. There is no indication in the police report that, at the time of the

stop, the driver, later identified as the defendant, had operated his vehicle erratically or was otherwise observed by the police to have committed a violation of the motor vehicle laws.

After stopping the defendant's vehicle, one of the responding officers approached the defendant and allegedly made observations which led the officer to believe that the defendant was under the influence of alcohol. Defendant was thereafter arrested, transported to police headquarters and asked to submit to a breathalyzer test. The defendant refused, whereupon he was charged with driving while intoxicated and refusing to submit to a breath test.

On March 30, 2006, defendant's attorney filed a Notice of Motion suppressing all evidence seized from the defendant as a result of the stop of his motor vehicle, on the ground that the stop constituted an unreasonable warrantless seizure in violation of the Fourth Amendment. That motion came on for hearing before the Hon. Scott Bennion in the Clifton Municipal Court on May 23, 2006. After hearing legal argument from both sides, Judge Bennion noted that the case presented "an interesting issue," and decided to reserve decision. The case was reconvened in Clifton Municipal Court on July 26, 2006. (App. D at 22a.) At that point, Judge Bennion denied the defendant's suppression motion, whereupon the defendant entered a conditional plea of guilty to Driving While Under the Influence, with the remaining charge of refusal to submit to a breathalyzer test being dismissed as part of the plea. (App. D at 28a.)

On August 15, 2006, the defendant filed an appeal from his judgment of conviction on the DWI charge, on the ground that his suppression motion had been erroneously denied. After the matter was briefed by both defense counsel and the Passaic County Prosecutor's Office, the matter came on for a de novo review before the Hon. George F. Rhode, Jr. in the Passaic County Superior Court on October 27, 2006. (App. C at 16a.) Following oral argument, Judge Rhode held that the information provided to the police dispatcher, and thence to the patrol officers, did not provide a reasonable suspicion that the defendant was driving under the influence. As a result, Judge Rhode granted the defendant's motion to suppress, and, consistent with the prior conditional plea agreement, found the defendant not-guilty of the DWI charge. (App. C at 21a.)

On November 8, 2006, the State of New Jersey filed a Notice of Appeal from Judge Rhode's decision to the Appellate Division of the New Jersey Superior Court. On September 21, 2007, the Appellate Division issued a decision affirming the grant of the suppression motion, on the ground that, on the record provided by the stipulation of facts, there was no evidence that the defendant operated his vehicle in any type of erratic manner suggesting impairment. (App. B at 11a.) According to the Appellate Division, the only evidence proffered by the State was M.A.'s report that the defendant was "drunk." However, the Court noted that it had no way of knowing what the term "drunk" meant to a 17 year old immediately following an alleged verbal dispute with her father. This, according to the Court, provided an insufficient basis for a police stop. (App. B at 14 a.)

On October 4, 2007, the State filed a Petition for Certification with the New Jersey Supreme Court, seeking a review of the Appellate Division decision. The Certification was thereafter granted, and the case was argued before the New Jersey Supreme Court on October 7, 2008. On December 22, 2008, the New Jersey Supreme court issued a decision reversing the two lower courts. (App. A at 1a.) According to the Court, the telephone caller's description that her father was drunk provided a sufficiently precise description of a commonly understood condition, and therefore, no further elaboration on his condition was required in order to justify the stop of his motor vehicle.

REASONS FOR GRANTING THE PETITION

Review is warranted to determine the circumstances under which a tip from an identified citizen-informant can justify a *Terry* stop of a motor vehicle

The Fourth Amendment guarantees "[t]he right of the people to be secure in the persons, houses, papers and effects, against unreasonable searches and seizures." It is well-established that the stop and detention of a person or a motor vehicle, even for a brief period or limited purposes, constitutes a "seizure" within the meaning of this provision. See: *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1395 (1979); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556, 96 S.Ct. 3074, 3082 (1976). An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. *Whren v. United States*, 517 U.S. 806, 809-10, 116 S.Ct. 1769

(1996). In *Delaware v. Prouse*, *supra*, the Supreme Court held that stopping an automobile and detaining the driver in order to check his driver's license and registration is unreasonable "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law . . ." 440 U.S. at 663, 99 S.Ct. at 1401. See also: *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581 (1989).

The U.S. Supreme Court has described reasonable suspicion as "more than an ill-defined hunch; it must be based upon a particularized and objective basis" for suspecting the person stopped of criminal activity. *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 694-695 (1981). By requiring that the stop of a person or motor vehicle be based upon facts which are capable of measurement against an objective standard, the court has attempted to limit what would otherwise be "the unbridled discretion of law enforcement officials" to intrude "upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches . . ." *Delaware v. Prouse*, 440 U.S. at 661, 99 S.Ct. at 1400.

It has been held that reasonable suspicion and probable cause are not "finely-tuned standards," but instead are "fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed." *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657, 1661 (1996). Because of this, "each case is to be decided on its own

facts and circumstances." *Terry v. Ohio*, 392 U.S. 1, 29, 88 S.Ct. 1868, 1884 (1968). In this regard, "The principle components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." *Ornelas*, 517 U.S. at 696, 116 S.Ct. at 1661-62. Thus, our Supreme Court has noted approvingly that "[t]he foremost method of enforcing traffic and vehicle safety regulations...is acting upon observed violations," *Prouse*, 440 U.S. at 659, 99 S.Ct. at 1399, which afford the "quantum of individualized suspicion" necessary to ensure that police discretion is sufficiently constrained. *Id.*, 440 U.S. at 654-655, 99 S.Ct., at 1396 (quoting *United States v. Martinez-Fuerte*, 428 U.S. at 560, 96 S.Ct. at 3084).

It is well-settled that reasonable suspicion may be based upon information from a confidential informant so long as the tip bears sufficient "indicia of reliability." *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921 (1972). In that case, the Supreme Court sustained a *Terry* stop and frisk undertaken on the basis of a tip given in person by a known informant who had provided information in the past. In *Adams*, a person approached a police cruiser in a high-crime area at 2:15 a.m., to report that an individual seated in a vehicle nearby was carrying narcotics and had a gun at his waist. The officer went to the vehicle and asked the occupant to step out. The occupant then rolled down the window and the officer reached in and removed a weapon from his waist. In upholding the stop and frisk, the Supreme Court was

persuaded by the fact that the informant was known to the officer and had provided reliable information to him in the past, and that the informant came forward personally to give information that was immediately verifiable at the scene. The court in *Adams* did not address the issue of anonymous tips, except to state that "[t]his is a stronger case than obtains in the case of an anonymous telephone tip." *Id.*, 407 U.S. at 146, 92 S.Ct. at 1923.

As to anonymous tips, the Supreme Court has spoken on two occasions in recent memory. In *Alabama v. White*, 496 U.S. 325, 110 S.Ct. 2412 (1990), the court addressed squarely the sufficiency of an anonymous tip to justify a police officer's stop and frisk. In that case, the police received an anonymous tip that the defendant would be leaving a specific address, at a specific time, and in a brown Plymouth station wagon with a broken taillight. The tipster continued that the defendant would drive to a specific motel while in possession of cocaine in a brown attache case. The police proceeded to the address provided by the tipster at the specified time, and observed the defendant leave the building and enter the station wagon. The officers followed her as she took the most direct route to the hotel specified by the tipsters, whereupon the defendant's vehicle was stopped just short of the motel. The *White* court concluded that "under the totality of the circumstances, the anonymous tip, as corroborated, exhibited sufficient indicia of reliability to justify the investigatory stop of [White's] car." *Id.*, 496 at 332, 110 S.Ct. at 2417. In reaching its decision, the court focused on the fact that the tip contained a "range of details" relating not just to easily obtained facts existing at the time of the tip,

but to future actions of third parties which were not easily predicted. In addition, the court focused on the independent corroboration undertaken by the officers. The court did not diminish the significance of the tip being anonymous. According to the court, "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity . . ." *Id.* at 329, 110 S.Ct. at 2415.

Ten years later, the Supreme Court again addressed the reliability of anonymous tips in *Florida v. J.L.*, 529 U.S. 266, 120 S.Ct. 1375 (2000). In *J.L.*, an anonymous caller reported to the police that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.*, 529 U.S. at 268, 120 S.Ct. 1375. No recording was made of the tip, and the tipster provided no information about himself. After an unspecified period of time, two officers responded to the bus stop and witnessed three black males "hanging out there." *Id.* The officers saw no firearms and they did not witness any threatening or unusual movements. The officers then approached and one of them told the defendant to put his hands up on the bus stop, whereupon he was frisked and a gun seized from his pocket. The defendant was subsequently charged with carrying a concealed firearm without a license. Under these circumstances, the Supreme Court held that the officers lacked reasonable suspicion to conduct a *Terry* stop. The court reasoned that the officers' suspicion was based on "the bare report of an unknown unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about *J.L.*" *Id.*, at 271, 120 S.Ct. 1375. As such, the court determined that the tip lacked "the

moderate indicia of reliability," such as "predictive information," necessary to allow the officers to test the tipster's credibility. *Id.*

Based on the holdings in *White* and *J.L.*, it is clear that the Supreme Court requires, at the very least, predictive information and independent, corroborative police investigation to justify a *Terry* stop based on an anonymous telephone tip. However, the analytical framework becomes far less clear when dealing with citizen-informant tips. Unlike tips from confidential informants addressed in *Adams v. Williams*, *supra*, or anonymous tips addressed in *White* and *J.L.*, the Supreme Court has never addressed the issue of when a tip from an identified citizen informant, who is neither anonymous nor a known confidential informant, can provide the "reasonable and articulable suspicion" necessary for a *Terry* stop. Indeed, a review of the case law indicates that there is a complete dearth of federal case authority dealing with the issue of a *Terry* stop which is based on a tip from a citizen-informant, who, although identified, may provide the police with little or no objective information justifying the stop. One of the few Circuit cases to address this issue was *United States v. Elmore*, 482 F.3d 172 (2nd Cir. 2007). In *Elmore*, a detective with the Norwalk Police Department received a telephone call from a woman claiming to be a close friend of the defendant. The caller identified herself and provided the detective with her home and cell phone numbers. She informed the detective that the defendant was in possession of some weapons and expressed concern that he "might do harm to somebody." The detective had not previously used the caller as a confidential informant and had never spoken to her

before. Throughout the course of the day, the detective spoke with the caller approximately four times, gradually obtaining more information from her about herself and the defendant. The detective then used a Department of Motor Vehicles database to obtain an address and birth date for the caller, but did not go to the address that he had found. In an attempt to verify her identity, the detective asked the caller about an incident in which the defendant had been shot. The caller knew about the incident and described the specific injuries that the defendant had sustained. She said she was the one who nursed him back to health. She also said that the defendant had been shot in retaliation for having pistol-whipped a man named Demark Bond. This information matched police reports on the defendant's injuries and the police's theory for a possible motive for the shooting. Moreover, the caller described the specific type of firearms that the defendant had, and identified the two vehicles where they were being kept. The caller also informed the detective as to the name and address of the owner of one of the vehicles, as well as the name and address of the defendant's girlfriend. The detective thereupon took several steps to corroborate the information that he received from the caller. Specifically, the detective went to the address where the defendant was said to be residing, and found one of the vehicles that had been described by the caller. The detective also confirmed that the vehicle was registered to the individual that the caller identified, and that the defendant's girlfriend was also living at the address. The detective checked the defendant's criminal history and discovered that he had previously been arrested for armed robbery. Based on this information, the detective

drafted a memo to all Norwalk police officers, and the defendant was eventually stopped while operating one of the vehicles described by the caller.

In upholding the constitutionality of the stop of the defendant's vehicle, the Second Circuit explained that where some information is known about an informant and the informant is not wholly anonymous, "a lesser degree of corroboration may be sufficient to establish reasonable suspicion." *Id.* at 181. The court explained:

Informants do not all fall into neat categories of *known or anonymous*. Instead, it is useful to think of known reliability and corroboration as a sliding scale. Where the informant is known from past practice to be reliable . . . no corroboration will be required to support reasonable suspicion. Where the informant is completely anonymous . . . a significant amount of corroboration will be required. However, when the informant is only partially known (i.e., her identity and reliability are not verified, but neither is she completely anonymous), a lesser degree of corroboration may be sufficient to establish reasonable suspicion.

Id. at 181.

The problem with the "sliding scale" analysis espoused by Second Circuit is that it is far too imprecise to provide meaningful legal guidance to the courts in cases which involve informants who are neither confidential nor anonymous. Indeed, although the

citizen-informant in the *Elmore* case provided the police with her name, cell number and relationship to the defendant, as well as with enough detailed information about herself and the defendant to enable the police to independently corroborate much of the information that she supplied, the reliability of tips from citizen-informants is not often so easily verified, as highlighted by the present case. While the citizen-informer in this case related her name and address and relationship to the defendant to the police, the only information which she furnished about the defendant himself was that she had been involved in a verbal dispute with him, that he was "drunk," and that he was leaving his residence operating a black Oldsmobile bearing license tag JR4 63K, heading toward Passaic Avenue. There is absolutely no indication that M.A.'s opinion about her father's alleged inebriation was obtained from her own personal knowledge or observation, or otherwise had any factual support. Indeed, no one from the police took any steps to corroborate the information that they received from M.A., such as by asking how M.A. knew that her father was "drunk." Indeed, there is no indication that the police even bothered to verify that M.A. was who she said she was, or that she was related to the defendant, or that her bald assertion that the defendant was "drunk" was in any way reliable. Similarly, there is no indication that, at any time prior to the stop, the defendant had been observed by the police to have operated his vehicle erratically or otherwise committed a violation of the motor vehicle laws. In effect then, in order to stop the defendant's motor vehicle, the police relied solely upon a single, conclusory opinion from a 17 year old citizen-informant of unknown reliability, whose identity was never confirmed, and whose opinion

was never corroborated. On this meager record, it is inconceivable that the police officers could have had "a particularized and objective basis" for suspecting the defendant of violating the motor vehicle laws. *United States v. Cortez*, 449 U.S. at 417-418, 101 S.Ct. at 694-695. As set forth in *United States v. Brignoni-Ponce*, 422 U.S. 873, 880, 95 S.Ct. 2574, 2579-80 (1975), a suspicion is not reasonable unless officers have based it on "specific and articulable facts." The stop of the defendant's vehicle in this case was anathema to these constitutional principles, since it was based not on any specific and articulable facts, but rather on unsupported opinion and conjecture.

In ruling that the stop of the defendant's vehicle in this case was constitutionally permissible, the New Jersey Supreme Court reasoned that a report of a concerned citizen or known person is not customarily viewed with the same suspicion as a tip by a confidential informant or anonymous informant. The Court then went even further by holding that, when an informant is an ordinary citizen, "New Jersey courts assume that the informant has sufficient veracity [to] require no further demonstration of reliability." Citing *State v. Stovall*, 170 N.J. 346, 362 (2002). In effect then, the New Jersey Supreme Court ruled that the veracity of identified citizen-informants is to be *presumed*, without any corroboration as to either the tipster's identity or information. Frankly, there is no U.S. Supreme Court precedent for such a sweeping generalization.¹

¹ In its decision, the New Jersey Supreme Court noted that, under New Jersey law, an ordinary citizen is qualified to advance
(Cont'd)

While it is certainly true that a tip from a "confidential informant" who has provided reliable information in the past has been viewed by our courts as being more inherently reliable than a tip from an anonymous informant, the U.S. Supreme Court has never suggested that a tip from an identified "citizen-informant" is so inherently reliable as to avoid the need for *any* corroboration of the tip. Indeed, such a proposition is contrary to this Court's determination in *Adams v. Williams, supra*, where it was held that even in the case of a confidential informant who has provided reliable information in the past, the tip must still carry sufficient "indicia of reliability" to justify a *Terry* stop. 407 U.S. at 147, 92 S.Ct. at 1924.

Although the U.S. Supreme Court has never addressed the extent of reliability necessary to justify a *Terry* stop based on a tip from an identified citizen-informant, as opposed to a confidential informant, it is difficult to conceive that the court would tolerate a *lesser* showing of reliability from a citizen-informant than a confidential informant. This is only logical, given the fact that a citizen-informant, though he may be identified to

(Cont'd)

an opinion in a court proceeding that a person is intoxicated due to consumption of alcohol, since the symptoms of that condition "have become such common knowledge." However, as with most lay opinion testimony, there is a basic evidentiary requirement that the opinion be based on the personal knowledge or observation of the person testifying. In the case at bar, there was no indication whatsoever that the opinion of the defendant's 17 year old daughter was based on any personal knowledge or observation regarding her father, as opposed to speculation, hearsay or some other impermissible basis.

the police, typically will not have a prior track record of providing reliable information, as usually occurs with a confidential informant. Thus, the police usually will have no way to objectively measure the reliability of the citizen-informant's tip based solely on the fact that he has identified himself. Clearly, if the reliability of a citizen-informant cannot be verified solely on his identity, the tip itself must be corroborated in some fashion sufficient to carry the "indicia of reliability" mandated by *Adams*. Nevertheless, in the case at bar, the New Jersey Supreme Court has in effect held that not only does a tip from an identified citizen-informant require a *lesser* showing of corroboration than that of a confidential informant, but in fact requires *no* corroboration! Thus, the New Jersey Supreme Court upheld the stop of the defendant's vehicle in this case, even though it was based on nothing more than a conclusory opinion from a 17 year old girl that her father was "drunk," without any verification by the police that the caller was who she said she was, or that her opinion was based on observation, personal knowledge or some other facts that could provide the police with "a particularized and objective basis" for stopping the defendant's vehicle. *United States v. Cortez*, 449 U.S. at 417-18, 101 S.Ct. at 694-95. For all we know, on this record the call to the police could have been made by someone impersonating defendant's daughter, or could have been a prank stemming from a grudge that the daughter had arising from her "verbal dispute" with the defendant.

Of course, in view of the fact that the U.S. Supreme Court has never addressed the degree of reliability and/or corroboration necessary to justify a *Terry* stop based

entirely on a tip from an identified citizen-informant, the New Jersey Supreme Court lacked appropriate guidance in adjudicating the issue before it. In an age where cellular phones and electronic communications are becoming increasingly commonplace, tips from citizen-informants are becoming as widespread as those from confidential informants, if not more so. Consequently, it is imperative that this Court set down appropriate constitutional parameters for when a citizen-informant's tip establishes a reasonable and articulable suspicion sufficient to make a *Terry* stop. In the absence of such authority, lower federal and state courts will be left to speculate as to the appropriate criteria, and situations will no doubt arise, as they did in this case, where a *Terry* stop is upheld without any verification of either the informant's identity or tip, in direct contravention of the constitutional safeguards established by *Delaware v. Prouse*, *supra*, and its progeny.

CONCLUSION

For all of the reasons herein above stated, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX

1a

**APPENDIX A — PER CURIAM OPINION OF THE
SUPREME COURT OF NEW JERSEY
DECIDED DECEMBER 22, 2008**

SUPREME COURT OF NEW JERSEY

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

PAUL AMELIO,

Defendant-Respondent.

Argued October 7, 2008 — Decided December 22, 2008

On certification to the Superior Court, Appellate
Division.

PER CURIAM.

In this case we decide whether a telephone call to a police dispatcher by a seventeen-year-old reporting that her father was drunk and driving provided a constitutional basis to stop defendant's vehicle. We hold that under the circumstances presented there was reasonable and articulable suspicion of an offense to support a constitutional motor vehicle stop by the police.

Appendix A

I.

The parties stipulated to the facts for the purpose of deciding defendant Paul Amelio's motion to suppress the evidence resulting from the motor vehicle stop. Specifically, the parties accepted the facts as presented in police officer Peter Turano's police report. On December 11, 2005, at approximately 12:30 a.m., Clifton Patrol Officers Peter A. Turano and Carmen Bermudez were dispatched to defendant's home on Patricia Place to investigate a domestic disturbance between defendant and his seventeen-year-old daughter. The daughter initially had contacted police dispatch to report that she was having a verbal dispute with her father. While officers were en route to investigate the family crisis, dispatch advised that the daughter had called back with information that her father was drunk and that he was leaving the home operating a black Oldsmobile. The daughter also gave the New Jersey license plate number of the vehicle.

When the two officers arrived at the intersection of Passaic Avenue and Allwood Road, Turano saw a black Oldsmobile, with a license plate number matching the number provided by dispatch, turn left onto Patricia Place. Turano, who was driving a marked patrol car, pulled behind the Oldsmobile that had stopped on the side of the road. After approximately five seconds, defendant drove away towards his home. The officers followed, activated the lights and siren on the vehicle, and stopped behind defendant's vehicle after he pulled partially into the driveway of his home. As a result of

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the stop, the police charged defendant with driving while intoxicated, *N.J.S.A.* 39:4-50 (DWI), and refusing to submit to a breathalyzer test, *N-J-S.A.* 39:4-50.2.

The municipal court judge denied defendant's motion challenging the legality of the stop, finding that the police had reasonable suspicion to conduct an investigatory stop of defendant. Defendant then entered a conditional guilty plea to DWI, reserving the right to appeal the denial of his motion to suppress. The trial court imposed appropriate fines and penalties.

A de novo review followed, limited to the issue of the validity of the motor vehicle stop. The Law Division reversed. The court found that the police did not have reasonable suspicion to stop the motor vehicle because the officers failed to observe defendant driving erratically and because the call to police by defendant's daughter describing defendant as drunk was conclusory in nature.

The State appealed. In an unpublished decision, the Appellate Division affirmed. The panel reasoned that there was no evidence that defendant operated his vehicle erratically, and it had "no way of knowing what the term 'drunk' meant to a seventeen-year-old immediately following a 'verbal dispute' with her father."

We granted the State's petition for certification to review the Appellate Division's ruling, 193 *N.J.* 587, 940 A.2d 1219 (2008), and also granted amicus curiae status to the Attorney General. We now reverse.

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II.

Both the United States and the New Jersey Constitutions protect citizens against unreasonable searches and seizures. *U.S. Const.* amend. IV; *N.J. Const.* art. I, ¶ 7. It is well established that the investigative stop of an automobile by police constitutes a seizure that implicates those constitutional protections. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660, 667 (1979) (“[S]topping an automobile and detaining its occupants constitute[s] a ‘seizure’ within the meaning of those Amendments, even though the purpose of the stop is limited and the resulting detention quite brief.”) (citation omitted); *State v. Locurto*, 157 N.J. 463, 470, 724 A.2d 234 (1999).

“A lawful stop of an automobile must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed.” *State v. Carty*, 170 N.J. 632, 639-640, 790 A.2d 903, modified by 174 N.J. 351, 806 A.2d 798 (2002) (citing *Prouse*, *supra*, 440 U.S. at 663, 99 S.Ct. at 1401, 59 L.Ed.2d at 673). The burden is on the State to demonstrate by a preponderance of the evidence that it possessed sufficient information to give rise to the required level of suspicion. *State v. Pineiro*, 181 N.J. 13, 19-20, 853 A.2d 887 (2004).

We have noted that the “[r]easonable suspicion necessary to justify an investigatory stop is a lower standard than the probable cause necessary to sustain an arrest.” *State v. Stovall*, 170 N.J. 346, 356, 788 A.2d

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746 (2002) (citing *State v. Citarella*, 154 N.J. 272, 279, 712 A.2d 1096 (1998)). The standard requires “‘some minimal level of objective justification for making the stop.’” *State v. Nishina*, 175 N.J. 502, 511, 816 A.2d 153 (2003) (citation omitted). “When determining if the [police] officer’s actions were reasonable,” the court must consider the reasonable inferences that the police officer is entitled to draw “‘in light of his experience.’” *State v. Arthur*, 149 N.J. 1, 8, 691 A.2d 808 (1997) (citation omitted). “Neither ‘inarticulate hunches’ nor an arresting officer’s subjective good faith can justify an infringement of a citizen’s constitutionally guaranteed rights. Rather, the officer ‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.’” *Ibid.* (alteration in original) (citations omitted). Moreover, the court should scrutinize the reasons for the particularized suspicion. *State v. Davis*, 104 N.J. 490, 505, 517 A.2d 859 (1986).

In some circumstances an informant’s tip may assist the court in evaluating whether the police officer had reasonable suspicion to stop a person. That said, “[a]n anonymous tip, standing alone, is rarely sufficient to establish a reasonable articulable suspicion of criminal activity.” *State v. Rodriguez*, 172 N.J. 117, 127, 796 A.2d 857 (2002) (citing *Alabama v. White*, 496 U.S. 325, 329, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301, 308 (1990)). The anonymous informant’s “veracity,” “reliability” and “basis of knowledge” are “relevant in determining the value of his report.” *Ibid.* (citation and quotation marks omitted).

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We have noted that “[a] report by a concerned citizen” or a known person is not “viewed with the same degree of suspicion that applies to a tip by a confidential informant” or an anonymous informant. *Wildoner v. Borough of Ramsey*, 162 N.J. 375, 390, 744 A.2d 1146 (2000). That is, “‘[d]ifferent considerations obtain . . . when the informer is an ordinary citizen,’” *Ibid.* (omission in original) (quoting *State v. Davis*, 104 N.J. 490, 506, 517 A.2d 859 (1986) (“There is an assumption grounded in common experience that such a person is motivated by factors that are consistent with law enforcement goals.”)); see also *Stovall, supra*, 170 N.J. at 362, 788 A.2d 746 (noting that “[w]hen an informant is an ordinary citizen, New Jersey courts assume that the informant has sufficient veracity and require no further demonstration of reliability”).

In *Wildoner*, we cited with approval *State v. Lakomy*, 126 N.J.Super. 430, 435, 315 A.2d 46 (App.Div.1974). *Wildoner, supra*, 162 N.J. at 391, 744 A.2d 1146. In *Lakomy*, authored by then Judge Handler, later Justice Handler, the police were told that an employee of the company had seen the defendant with a gun. *Id.* at 432, 315 A.2d 46. The police located the defendant and patted him down. *Ibid.* In finding that the police had lawfully executed a stop and frisk, Judge Handler quoted the Wisconsin Supreme Court for the principle that an ordinary citizen who reports a crime stands in a much different light than an informant because the ordinary citizen “‘acts with an intent to aid the police in law enforcement because of his concern for society or for his own safety.’” *Id.* at 436, 315 A.2d 46 (quoting *State v. Paszek*, 50 Wis.2d 619, 184 N.W.2d. 836, 843 (1971)).

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Applying these principles to the present case, the officers properly relied on the seventeen-year-old daughter's report that her father was drunk. This was not an anonymous tip. Rather, this was a citizen who gave her name to the police when she first reported a verbal fight in the household, and then a short while later reported that her father, whom she said was drunk, was leaving the house driving his car. The seventeen-year-old was "in the nature of a victim or complainant, whose information could be taken at face value irrespective of other evidence concerning [her] reliability." *Lakomy, supra*, 126 N.J. Super., at 436, 315 A.2d 46 (citation omitted).

We agree with the State that this case may be an even stronger one than *State v. Golotta*, 178 N.J. 205, 837 A.2d 359 (2003), in support of finding no constitutional violation. In *Golotta*, in distinguishing a 9-1-1 call from an unknown informant, the Court declared that a 9-1-1 caller "place[d] his anonymity at risk" by virtue of using the 9-1-1 system" because the records required to be made of such calls "provide the police with an ability to trace the identity of the caller in a manner that enhances his reliability." *Id.* at 225-26, 837 A.2d 359 (alteration in original). This Court analogized the information supplied by a 9-1-1 caller to a report offered by a citizen informant, finding that such a call should not be "viewed with the same degree of suspicion that applies to a tip by a confidential informant." *Id.* at 220, 837 A.2d 359 (citation omitted). The Court concluded that "the 9-1-1 caller must provide a sufficient quantity of information, such as an adequate

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description of the vehicle, its location and bearing, or 'similar innocent details, so that the officer, and the court, may be certain that the vehicle stopped is the same as the one identified by the caller.' " *Id.* at 222, 837 A.2d 359 (quoting *United States v. Wheat*, 278 F.3d 722, 731 (8th Cir.2001), *cert denied*, 537 U.S. 850, 123 S.Ct. 194, 154 L.Ed.2d 81 (2002)).

In *Golotta*, the 9-1-1 caller was an unknown informant who placed his anonymity at risk by virtue of using the 9-1-1 system. In the present case, the caller was a known person, who exposed herself to criminal prosecution if the information she related to dispatch was knowingly false. *See N.J.S.A. 2C:33-39* (criminalizing knowingly and falsely reporting emergencies). Moreover, she described the vehicle and gave the license tag number. Thus, the rationale of *Golotta* applies to this case with even greater force.

Nor does the fact the caller was seventeen and merely described the driver as "drunk" alter the result. The term "drunk" has a commonly understood meaning and the signs of drunkenness are matters of common knowledge and experience. From the television, the Internet, and education in our schools, we have no doubt that a seventeen-year-old may fairly understand when someone is drunk. This Court recently reiterated that "New Jersey has permitted the use of lay opinion testimony to establish alcohol intoxication." *State v. Bealor*, 187 N.J. 574, 585, 902 A.2d 226 (2006) (citation omitted). We expressly noted that "[a]n ordinary citizen is qualified to advance an opinion in a court proceeding

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that a person was intoxicated because of consumption of alcohol [because] [t]he symptoms of that condition have become such common knowledge. . . ." *Id.* at 587, 902 A.2d 226 (quoting *State v. Smith*, 58 N.J. 202, 213, 276 A.2d 369 (1971)). We find that in these fast-arising circumstances, there was no need to require a more precise description than the word "drunk" to describe a commonly understood condition.

In summary, the seventeen-year-old complainant first called the police for assistance because of a domestic disturbance with her father. She then called back to report that her father left the house driving his car while drunk, and described the vehicle, including the license tag number. In both instances, the caller provided her name and address to the police. Whether defendant had remained in the home or, as the situation developed here, was located in a motor vehicle, the police had a duty to investigate the report of a domestic disturbance. The caller's description that her father was drunk provided a sufficiently precise description of a commonly understood condition, and therefore, no further elaboration on his condition was required. The details of those reports by a known citizen gave the police reasonable and articulable suspicion to stop and investigate the conduct of defendant.

III.

We reverse the judgment of the Appellate Division affirming the grant of the defendant's motion to suppress and remand to the Law Division for further proceedings consistent with this opinion.

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CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in this opinion.

**APPENDIX B — PER CURIAM OPINION OF THE
SUPERIOR COURT OF NEW JERSEY, APPELLATE
DIVISION DECIDED SEPTEMBER 21, 2007**

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

A-1679-06T5

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

PAUL AMELIO,

Defendant-Respondent.

Submitted May 1, 2007 — Decided September 21, 2007

Before Judges KESTIN and WEISSBARD.

PER CURIAM.

Following de novo review, *R.* 3:23-8, the State appeals from an order of the Law Division, granting defendant Paul Amelio's motion to suppress evidence resulting from a stop of defendant's vehicle on December 11, 2005. The stop led to defendant's arrest for driving while intoxicated (DWI), *N.J.S.A.* 39:4-50, and thereafter for refusal to submit to a breathalyzer test, *N.J.S.A.* 39:4-50.2. We affirm the suppression order.

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At the suppression motion before the municipal court defendant and the State stipulated that the motion was based upon those facts contained in a portion of a report of Clifton Police Officer Peter Turano, as follows:

On the above date, the undersigned, Ptl. Peter A. Turano # 204 (car 7, post 7) along with Ptl. Carmen Bermudez # 5011 (car 4, post 4), were detailed to 130 Patricia Ave. on a report of a domestic disturbance. The complainant, Marissa Amelio (age 17) contacted police dispatch and reported that she was having a verbal dispute with her father, Paul Amelio. While responding to the incident location, the complainant advised dispatch that her father was "drunk" and that he was leaving the scene operating a black Oldsmobile bearing New Jersey registration, JR463K heading toward Passaic Ave.

Upon arrival to the intersection of Passaic Ave. and Allwood Rd., the undersigned observed a black Oldsmobile Intrigue with the same registration provided by dispatch turning left onto Patricia Place. The undersigned immediately got behind the driver as he parked his vehicle at the side of the road. The driver paused for approximately five seconds and then proceeded to drive away. The undersigned re-entered the patrol vehicle and activated the emergency lights and siren on marked patrol vehicle number 7

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in an attempt to stop the driver. The driver continued east on Patricia Place until he pulled partially into his driveway located at 130 Patricia Place.

After the municipal court denied his motion to suppress, defendant entered a "conditional" plea of guilty to DWI with the refusal charge to be dismissed, pursuant to a plea agreement between defendant and the municipal prosecutor. The agreement provided that if the DWI conviction was overturned on appeal, the refusal charge would be returned to the municipal court for trial.

On de novo appeal, Judge Rhode concluded, in an oral decision, that defendant's motion to suppress should have been granted. The court reasoned that the information provided to the police dispatcher, and thence to the patrol officers, did not provide reasonable suspicion that defendant was driving under the influence. We agree.

On the attenuated record¹ provided by the stipulation recited earlier, there was no evidence that defendant operated his vehicle in any type of erratic manner suggesting impairment. The only evidence proffered by the State is the daughter's report that

1. A full evidentiary hearing would have provided more detail, filling in evident gaps in the scenario. Since the State bears the burden of sustaining the stop, any deficiencies in the record necessarily fall on the State.

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defendant was "drunk." We have no way of knowing what the term "drunk" meant to a seventeen-year-old immediately following a "verbal dispute" with her father—not an uncommon occurrence. While the report was not from an anonymous caller, its content provided an insufficient basis for a police stop. As Judge Rhode put it:

However, this is the first case I've ever had where the call wasn't made by another driver observing the person, it was made by a daughter and it was conclusionary in nature. It wasn't, wow, he pulled out of here, he almost hit the neighbor, swerving down the street, I know I saw him have three or four or five shots of vodka before he left, and wow, up the street he almost hit a parked car. None of that, just he was drunk, which is a conclusion.

We agree with the judge that *State v. Golotta*, 178 N.J. 205 (2003), is distinguishable and does not support the State's position. In *Golotta*, and in *United States v. Wheat*, 278 F.3d 722 (8th Cir.2001), *cert. denied*, 537 U.S. 850, 123 S.Ct., 194, 154 L. Ed.2d 81 (2002), upon which it relied, the 9-1-1 caller described erratic driving which he or she had personally witnessed. *Golotta*, *supra*, 178 N.J. at 209; *Wheat*, *supra*, 278 F.3d at 724. Whether the caller in this case used 9-1-1 or directly called the police department is of no moment. As noted, the deficiency is in the content of her information. There is no basis for the State's assertion that since defendant's daughter had "lived with him and seen him presumably on a daily

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basis for many years [s]he would be able to ascertain whether he was intoxicated." Whatever the daughter *might* have been able to say at trial does not assist a reviewing court in deciding the propriety of the motor vehicle stop.

On this sparse record, we fully concur with Judge Rhode's analysis and conclusion as expressed in his oral ruling of October 27, 2006.

Affirmed and remanded for further proceedings.

**APPENDIX C — EXCERPTED TRANSCRIPT OF
PROCEEDINGS OF THE SUPERIOR COURT OF
NEW JERSEY, PASSAIC COUNTY, CRIMINAL
PART DATED OCTOBER 27, 2006**

**SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY : CRIMINAL PART
DOCKET NO. M.A. 4642**

STATE OF NEW JERSEY,

vs.

PAUL AMELIO,

Defendant.

Date: October 27, 2006

TRANSCRIPT OF PROCEEDINGS

BEFORE:

**THE HONORABLE GEORGE F. RHODE, JR.,
J.S.C.**

TRANSCRIPT ORDERED BY:

**STEVEN E. BRAUN, ESQ. (Chief Assistant
Prosecutor)**

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APPEARANCES:

LATOYIA K. JENKINS, ESQ. (Assistant
Prosecutor) Attorney for the State

DOUGLAS J. KINZ, ESQ. Attorney for Defendant

[22] * * *

THE COURT: ...

This is the case of *State vs. Paul Amelio*. It's out of the Municipal Court of Clifton and I've reviewed the transcripts, the exhibits, I've heard the arguments of Counsel and I've read *State vs. Galotta*, 178 NJ 205 about four times this week. Not that I haven't been acquainted with it previously, because I've had other cases under *Galotta*.

[23] And I — and I have to start out by saying this. The — the law, and especially the law regarding the protection of individual rights, is not a logical thing. Many, many, manytimes police officers are asked to do things which are not natural to police officers. It's not natural when a police officer is investigating a crime to get a suspect and say wait a minute, you don't have to talk, you don't have to say anything.

It's — a lot of the acts that police officers and other law enforcement people are asked to do are acts which fly in the face of logical crime prevention, accident

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prevention. I'm a Judge, I didn't make the law, I'm just — I've just sworn to enforce the law.

And many times police officers probably do things that save lives, that protect the public, stop people on a hunch that's less than probable cause or reasonable suspicion and it all works out for the good, except for the fact that once they do that, the fruits of that stop cannot be used against a defendant.

I find that that's the case right here. I find that for purposes of protecting the safety of the public, this might have been a great idea. But for purposes of prosecuting the person, based upon evidence [24] that was recovered by the police by a stop of this nature, it's — it would be unlawful to allow this evidence to be used and it should be suppressed.

This — the case of *State vs. Galotta* says a lot of things. It's a case really about — that distinguishes in the first place the difference between anonymous tips in the criminal sphere and anonymous tips where drunk drivers are concerned.

And they even say in *State vs. Galotta*, the Supreme Court says it's more important to stop a drunk driver than a person that may have a gun.

And there's — the question is what type of — what type of information will satisfy the requirements for reasonable suspicion, when the police officer on the site has observed nothing that would allow him to presume

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that the person driving the — the car may have — may be impaired because of alcohol.

And at least all of the cases, the *Wheat* case, the *Galotta* case, they all talk about where police don't make any observation. They just stop a person because they get a telephone call. And they — they describe really what would provide a constitutional basis for the stop.

And I have *State vs. Galotta* right here and some of the things that struck me is that they outline [25] that a police officer who makes observations on his own that — that constitute a reasonable suspicion that someone is drunk, can pull that person over.

But what about when he doesn't? When he doesn't, when it's a telephone call, and I think that this telephone call in the instant case, like another call I had in another case that I had to decide under *Galotta*, in — in — in the case that I had before, it was a volunteer fireman who just happened to know the dispatcher when he called, so he called up and when the guy answered "police headquarters", he said, Ernie, hey it's Bill. I'm on such and such a street, I'm behind this guy, he's swerving all over the place.

Well, I think in this case, you're going to find that the distinction between a 911 call and a regular call are going to disappear in the case law, because the police — same ability to find that number that called, that location from where it was called in a non-911 — non-911 calls as they do on a 911 call.

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However, this is the first case I've ever had where the call wasn't made by another driver observing the person, it was made by a daughter and it was conclusionary in nature. It wasn't, wow, he pulled out of here, he almost hit the neighbor, swerving down the street, I know I saw him have three or four or five [26] shots of vodka before he left, and wow, up the street, he almost hit a parked car. None of that, just he was drunk, which is a conclusion.

And even under *Galotta*, if someone called up and said I'm on Marlboro Street, a guy just went in a blue Ford, he's drunk. It would not suffice, even if the person saw the person swerving, it's not — it doesn't suffice, unless the police are told the elements that constitute it.

So in this case if she later said in court, oh, Your Honor, he backed out of the driveway and did this, did that, it wouldn't be any good anyway, because she said to the police he's drunk, and that won't do it.

The Court in *Galotta* emphasized, as a matter of fact they cite *US vs. Wheeler* (phonetic), 278 Fed Third 722, the *Wheat* Court emphasized that the tip must also contain a sufficient quantity of information to support an inference that the tipster had witnessed an actual traffic violation that compels an immediate stop.

Now in this Court, I had a case where I — I found that the — the evidence obtained in a stop should be suppressed where a person called the dispatcher and

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said to the dispatcher, and I listened [27] to the tape in that case, a blue Ford, it's traveling on this street, it swerved and almost hit a parked car, almost hit an oncoming car, all over the place, license plate number NV6 422 and then said, the car is pulling into Krauszer's. And what did the dispatcher do? The dispatcher called out to the car, and the Defense was really thinking, got a tape of that dispatch and all the dispatcher said is suspected DWI, the car's in Krauszer's lot and never gave a further description.

It's what the police on the scene, who make the stop are told, not what's — off by an intermediary. And in this case, the police might have been doing a good thing, I don't know. If they found out later on that this gentleman was drinking, they did a good thing by getting him off the road, however they didn't have reasonable suspicion to stop him.

I'm going to grant the motion to suppress. I'm going to find him not guilty.

* * * *

**APPENDIX D — EXCERPTED TRANSCRIPT OF
PROCEEDINGS OF THE CLIFTON MUNICIPAL
COURT, PASSAIC COUNTY, NEW JERSEY
DATED JULY 26, 2006**

**CLIFTON MUNICIPAL COURT
PASSAIC COUNTY, NEW JERSEY
SUMMONS NO. CL-348626
CL-348627**

STATE OF NEW JERSEY,

Plaintiff,

vs.

PAUL AMELIO,

Defendant.

Place: Clifton Municipal Court
900 Clifton Avenue
Clifton, N.J. 07011

Date: July 26, 2006

BEFORE:

HONORABLE SCOTT J. BENNION, J.M.C.

TRANSCRIPT ORDERED BY:

DOUGLAS J. KINZ, ESQ. (182 Notch Road,
West Paterson, N.J. 07424)

APPEARANCES:

THOMAS F. BRUNT, ESQ., Municipal Prosecutor
Attorney for the State

DOUGLAS J. KINZ, ESQ.
Attorney for the Defendant

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[commencing at page 3]

* * *

THE COURT: All right. This was a hearing The Court previously conducted and subsequently reserved decision. I am now prepared to render my decision in this case. The facts were stipulated as J-1. That was part of the police report, it reads as follows: Sunday, December 11th, 2005 domestic dispute/DWI arrest. On the above-date the undersigned patrolman Peter Turano, Car 7, Post 7, along with Patrolman Carmen Bermudez, Car 4, Post 4, were detailed to 130 Patricia Avenue on a report of a domestic disturbance. The complainant, I'll refer to her because she is a juvenile as M.A., age 17, conducted police dispatch and reported that she was having a verbal dispute with her father, the defendant in this case, Paul Amelio. While responding to the incident [4] location the complainant advised dispatch that her father was drunk and that he was leaving the scene operating a black Oldsmobile bearing New Jersey registration JR463K heading towards Passaic Avenue.

Upon arrival at the intersection of Passaic Avenue and Allwood Road the undersigned observed a black Oldsmobile Intrigue with the same registration provided by dispatch turning left onto Patricia Place. The undersigned immediately got behind the driver as he parked his vehicle at the side of the road. The driver paused for approximately five seconds and then proceeded to drive away. The undersigned re-entered

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the patrol vehicle and activated the emergency lights and siren on marked Patrol Vehicle No. 7 in an attempt to stop the driver.

The driver continued east on Patricia Place until he pulled partially into his driveway located at 130 Patricia Place.

The Court has considered the arguments of counsel in this case, in addition to reviewing the facts. The Court finds the leading case to be STATE VS. GULOTTA, 178 New Jersey 205. That's a decision of the Supreme Court of New Jersey 2003. In GULOTTA the pertinent facts were that on November 5th, 2005 at about 9:30 in the evening two officers of the Peapack[5]-Gladstone Police Department, each driving a separate police cruiser, received a message from a communications center in Somerville. The center's dispatcher relayed to the officers that the center had received a call from — quote — “a citizen informant” — end quote — using a cell phone. According to one officer who testified the citizen called to report that a person in a certain vehicle was driving erratically. The officer was informed that the vehicle was — quote — “all over the road” — end quote — and — quote — “out of control, it was weaving back and forth” — end quote. The caller also described the vehicle as a blue pickup truck with a License Plate No. VM407B, and indicated that it was traveling northbound on Route 206.

The officer testified at the suppression hearing that a name was not obtained from the caller who had called

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in this anonymous 911 tip. When the officer received the information he was traveling westbound on Pottersville Road, close to where the road intersects with Route 206. He explained I approached 206 at the crest of the hill. At the traffic light I approached I witnessed a blue pickup truck pass in front of me. The officer later indicated he had not observed — quote — “any movements of the vehicle [6] whatsoever.” The officer made the statement in response to the question can you describe what the vehicle was doing?

Reviewing the testimony in context the Supreme Court stated we understand it to mean that the officer did not see any erratic movements, but did observe the vehicle pass in front of him. He and the other officer, who was traveling northbound on 206, quickly moved behind the vehicle and they initiated the stop at the same time.

Now, the Supreme Court went on to rule in *GULOTTA*, stating at Page 218, we agree with those courts that have reduced the degree of corroboration necessary to uphold the stop of a motorist suspected of erratic driving in these circumstances. Similar to the reasoning of those courts our rationale is threefold: First, by its nature, a call placed and processed via the 911 system carries enhanced reliability not found in other context. Second, the conduct at issue is the temporary stop of a motor vehicle based on reasonable suspicion, not the more intrusive search of its contents or arrest of its driver, which would be governed by different rules. Third, an intoxicated or erratic driver

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poses a significant risk of death or injury to himself and to the public, and as such that [7] factor is substantial when evaluating the reasonableness of a stop itself.

Later on at Page 368 — Strike that. Later on Page 219, accordingly the State stands on firm Constitutional ground when it treats the anonymous 911 caller in the same fashion as it would as an identified citizen informant who alerts the police to an emergency situation. We previously have explained the difference between tips obtained by criminal as opposed to citizen informants.

Later on on Page 220 the Supreme Court states: From a Constitutional standpoint that lesser privacy interests in the nature of the intrusion (investigatory stop, not a full-blown search prompted by allegations of erratic driving) are relevant in assessing the reasonableness of the government's conduct. If those variables were absent or existed under different conditions our analysis might differ. For an example, an anonymous call to 911 reporting that an individual possessed illegal narcotics in his or her home would not, absent other factors, lend itself to the kind of reduced corroboration permitted in this case. In short, we do not intend our analysis to apply blindly to other search-and-seizure questions that ordinarily would not turn on principles or [8] considerations not implicated here.

The court continues by saying the final factor warranting a reduced degree of corroboration is the reliability that intoxicated drivers pose a significant risk

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to themselves and to the public. See *STATE VS. TISCIO (PHONETIC)*, 107 New Jersey 514 at Page 519, a 1987 Supreme Court case describing such drivers as moving time bombs. The combination of an undue ingestion of alcohol and the resultant mishandling of an automobile causes awesome carnage on our highways. *STATE VS. CAREY (PHONETIC)*, 168 New Jersey 413 at Page 429, Supreme Court decision of New Jersey from 2001. That reality imposes a duty on law enforcement officers to take appropriate steps within Constitutional statutory boundaries to maintain the safety of New Jersey's roads. *STATE VS. GREELEY*, 178 New Jersey 38 at Page 49, Supreme Court of New Jersey decision from 2003, recognizing the — quote — “continuing duty of police to safeguard the public” — end quote from — quote — “dangers” — end quote — imposed by intoxicated persons and recognizing — quote — “risks posed by an intoxicated driver to himself” — end quote.

In the matter at hand, first of all, the informant who called 911 was known. The party [9] identified themselves and identified the party they were calling about. Here the police were responding to a domestic dispute. They located a vehicle that matched the description that was given by the informant. The Court taken judicial notice that that vehicle was located in very close proximity to where the 911 call had come from, maybe a block or two away. In addition, the report — the 911 call — was of a drunk driver operating a motor vehicle. I note the age of the party calling it in, but The Court finds that a 17-year-old driver — a person, I

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should say — could recognize that a person is drunk and obviously recognize that they're going out and driving, and there's a concern for safety, and I suppose that that's why the 911 call was made.

The police stopped the vehicle. The Court also notes that the vehicle subsequently pulled away from the initial stop before the officer could get over to the driver and speak with the driver. The defendant was later arrested for DWI.

The Court in reviewing the facts of this case finds that it was proper for and constitutional for the police to conduct an investigatory search based upon the information furnished by the 911 caller without having the level of corroboration that traditionally [10] would be necessary to uphold such actions. Secondly, The Court finds the officer did have reasonable suspicion to conduct an investigatory stop of the vehicle based on the 911 tip from the caller that the person had been driving while drunk. Third, The Court finds that the officer, in addition to those two factors, had adequate grounds to stop the vehicle once the vehicle had pulled away after the initial stop, somewhat of an unusual activity, based on the police's community caretaking function.

So in light of all three of those facts I am going to deny the motion to suppress based again on those factors.

* * * *